IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1114 of 2003

IN

SUIT NO. 856 OF 2003

Nilesh Pravin Gada,Proprietor
M/s.Sona Developers .. Plaintiffs

versus

Smt.Gauri Pradeep Bhonsle .. Defendant

...

Mr.M.L. Palan i/b M.k. Khatri for the plaintiff.

Mr.K.D. Jha for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 24th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This motion is taken out by the plaintiff for appointment of a Court Receiver or in the alternative

restraining the defendant from alienating or parting with the possession of flat no.202, 2nd floor, Shiv Darshan, Prabhadevi, Mumbai 400 025 (for short "the said flat").

3. By an agreement of sale dated 9th March 1998, the plaintiff's father who was then carrying on business in the name and style of M/s.Sona Developers agreed to sell to the defendant the said flat for a total consideration of Rs.7 lakhs. On death of his father Mr. Nilesh Prem Gada, has filed the present suit. The plaintiff contends that out of the agreed consideration of Rs.7 lakhs, the defendant has paid only a sum of Rs.5,15,000/- and the balance amount of Rs.1,85,000/- is due. By a notice dated 21st October 2000 and 5th January 2001, the plaintiff terminated the agreement. In the suit however, the plaintiff has claimed a money decree for the balance of the price.

4. By filing an affidavit in reply, the defendant opposes the motion. According to the defendant, she has paid to the plaintiff a sum of Rs.6,85,000/-. The learned counsel for the defendant tenders for inspection of the Court the receipts of payment

issued by Mr.Prem gada, father of the present plaintiff. The receipts are returned after perusal. It prima facie appears that defendant does possess receipts for having paid a sum of Rs.6,85,000/- to the plaintiffs father. Therefore, only a sum of Rs.15,000/- remains to be paid which according to the defendant is payable only on formation of the society. However, assuming that the said sum is due, the defendant can be directed to deposit the said sum of Rs.15,000/- in the Court. Thereafter, prima facie, there would be no money due and payable to the plaintiff. Hence, I pass the following order:-

5. Motion of the plaintiff is dismissed. However, the defendant is directed to deposit sum of Rs.15,000/- in the Court within a period of four weeks. On such deposit, the money shall be invested in any nationalised bank of the choice of the defendant, if such choice is indicated at the time of the deposit, failing which the Bank of India, Fort Branch.

D.G. KARNIK, J